

- 4 -

**Remarks**

The present response is filed with a Request for Continued Examination (RCE), and is to the action mailed in the above-referenced case on February 2, 2004, made Final. Claims 1-14 are presented for examination. Claims 1-7, 11 and 12 have been withdrawn from consideration, leaving claims 8-10, 13 and 14 standing for further examination.

The Examiner has maintained the rejection of claims 8-10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yong et al., (U.S. 5,541,919) hereinafter Yong, in view of Woundy (US 6,031,841) hereinafter Woundy.

Applicant has again carefully studied the references provided by the Examiner, and the Examiner's rejections and statements of the instant Office Action. In response applicant argues that the combination of references relied upon by the Examiner not only fail to obviate all of the limitations of applicant's claims, the combination of references is itself invalid.

Applicant must respectfully point out to the Examiner that the reference of Woundy is an invalid reference because the filing date of applicant's invention predates that of the reference of Woundy. The presently claimed invention is a Divisional of the parent case, which was filed on June 3, 1997. However the filing date for the invention of Woundy is December 23, 1997. Therefore the reference of Woundy cannot be applied by the Examiner in combining with Yong in the rejection, and the reference should be withdrawn.

Regarding claim 8, the Examiner maintains that Yong discloses a data transmission system comprising a high priority queue reserved for data entities requiring that data entities be sent in a successive fashion at or above a minimum

**BEST AVAILABLE COPY**

- 5 -

rate; a lower priority data entity queue (col. 3, lines 27-47 and col. 4, line 40-col. 5, line 6); and control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be transmitted interspersed with data entities from the high priority queue (col. 3, lines 27-47, col. 4, line 40 -col. 5, line 6, and col. 9, line 43-col. 10 line 15).

As admitted by the Examiner, Yong does not specifically disclose a broadband transmission and transmitting system without causing the rate of the transmission to fall below the minimum rate, relying on the art of Woundy to teach satellite broadband transmission of packets with QOS (Woundy Col. 1, line 19-61) with a similar system as Yong. However, in view of applicant's point above regarding the filing dates of the invention of Woundy and that of the present invention, the combination relied upon by the Examiner for disclosing a broadband transmission and transmitting system without causing the rate of the transmission to fall below the minimum rate is rendered moot, and the reference of Yong now clearly fails as a sole reference for obviating applicant's invention as claimed.

Applicant believes claim 8 is therefore now unarguably patentable over the prior art. Claims 9 and 10 are patentable on their own merits, or at least as depended from a patentable claim. Claim 13 is rejected by the Examiner using the same reasoning as provided for claim 8, and is therefore also patentable based on the arguments provided by applicant on behalf of claim 8. Claim 14 is patentable on it's own merits, or at least as depended from a patentable claim.

As all of the claims as argued and presented for examination are patentable over the references cited and applied, applicant respectfully requests reexamination and that the case be passed quickly to issue. If there are any extensions of time required beyond an extension specifically petitioned and paid with this response, such extensions are hereby requested. If there are any fees due


BEST AVAILABLE COPY

- 6 -

beyond any fees paid by check with this response, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully Submitted,

Dan Kikinis

by   
Donald R. Boys  
Reg. No. 35,074

Donald R. Boys  
Central Coast Patent Agency  
P.O. Box 187  
Aromas, CA 95004  
(831) 726-1457

BEST AVAILABLE COPY